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Supreme Court, U.S.
FILED
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No. 98-759

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1998

CITY OF CHICAGO,

*Petitioner,*

*vs.*

MIKE YANG,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether a federal district court has ancillary jurisdiction over a post-judgment enforcement proceeding under Federal Rule of Civil Procedure 69 ("Rule 69") against a party other than the judgment-debtor.

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## STATEMENT OF THE CASE

### A. The Nature of the Case

This is a civil rights case under 28 U.S.C. § 1983 ("§ 1983") involving a Rule 69 supplementary collection proceeding to have the City indemnify a § 1983 judgment in accordance with 745 ILCS 10/9-102 ("§ 9-102"). After granting Yang's petition for indemnification against the City, the district court vacated that order and ruled that it had no subject matter jurisdiction over the Rule 69 supplementary proceeding. On February 25, 1998, the Seventh Circuit reversed[1] that decision and remanded the case. The City now petitions the Court for a writ of certiorari to review the Seventh Circuit's decision of February 25, 1998.

### B. Statement of Pertinent Facts

The following pertinent facts are taken verbatim from the "Facts" sections of the two Seventh Circuit opinions in this case:

> On January 8, 1991, at approximately 11:00 p.m., Mike Yang, co-owner of a south-side shoe store, received a call from his alarm company notifying him that the store had been burglarized. Yang called his brother, Myung and an employee, Bob. The defendants, uniformed police officers employed by the Chicago Police Department, had already arrived at the store when Yang got there. While Yang and his employee and brother busied themselves with repairing the shattered front display window, Officer

1. Yang has successfully appealed this case twice to the Seventh Circuit. Those two decisions are reported at 37 F.3d 282 and 137 F.3d 520.

Hardin prepared a police report by the front door of the store, adjacent to the broker window. Officer Brown entered the store to investigate. While inside the store looking for a board to repair the window, employee Bob noticed that Officer Brown was perusing the store in the manner of a shoplifter. Bob alerted Yang to this. As Officers Brown and Hardin began to leave, Yang noticed a bulge in Officer Brown's jacket. Believing that Officer Brown had stolen some merchandise, Yang approached the officer and requested that the merchandise be returned. At first, Officer Brown denied that he had taken any merchandise. But after a discussion that escalated into an argument, Officer Brown reached into his jacket and pulled out a pair of "L.A. Raiders" shorts and threw them at Yang. Officers Brown and Hardin then proceeded to enter their police car to drive away. When Yang followed, Officer Brown shoved Yang. Throughout the confrontation, Officer Hardin stood by the passenger door of the squad car. He did not speak or intervene in any manner despite Yang's repeated requests for Officer Hardin to call the police sergeant.

In an attempt to prevent Officer Brown from leaving, Yang held onto the driver's side door of the squad car to keep it open so that Officer Brown could not drive off. However, Officer Brown drove anyway, with the driver's side door ajar and Yang hanging onto the car. Officer Brown drove fast and recklessly in a zigzagging pattern, braking and accelerating, in an attempt to throw Yang off. Officer Brown also repeatedly struck Yang in the ribs with his elbow. Yang asserts that he was unable to let go of the car without being run over. Throughout the drive,

> Officer Hardin sat in the passenger seat. Officer Hardin did not say anything or in any way attempt to intervene. The squad car traveled, with Yang hanging on more than two full city blocks until two men on the sidewalk saw what was happening and ran out to the street to stop the police car. Yang let go when the car stopped. Officer Brown then got out of the car and punched Yang in the face, knocking him to the ground. Meanwhile, Yang's brother, who had run after the squad car, arrived at the scene. Officer Brown knocked Myung Yang to the ground.
>
> Throughout these events, Officer Hardin did not call the sergeant or attempt to stop Officer Brown in any way. However, as the Yang brothers lay in the street, Officer Hardin got out of the passenger seat of the squad car, drew his gun, pointed it at the brothers and shouted obscenities at them. The Yangs froze. Officers Hardin and Brown got back in the police car and drove away.

*See Yang v. Hardin*, 37 F.3d 282, 283-84 (7th Cir. 1994) and *Yang v. City of Chicago*, 137 F.3d 520, 523 (7th Cir. 1998).

**C. Proceedings Below**

The following procedural history of this case is taken, verbatim, from the "Proceedings Below" section of the Seventh Circuit's second opinion in this case:

> In January 1992, Mike Yang sued Officers Brown and Hardin, as well as the City of Chicago, for violations of 42 U.S.C. § 1983 and various state common law claims. Both officers defaulted, and

the City was dismissed from the action pursuant to *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978). The district court found against Officer Brown in the amount of $229,658.10 ($50,000 of which were punitive damages) and dismissed the claims against Officer Hardin. We reversed the district court's decision as to Officer Hardin, finding that Hardin was acting within the scope of his employment for purposes of § 1983 and that he violated Yang's civil rights. *See Yang*, 37 F.3d at 286.

On remand, on February 14, 1995, the district court entered judgment against Hardin in the amount of $185,658.10 for compensatory damages. On May 3, 1995, Yang filed a petition for indemnification and writ of execution, seeking indemnification of the Brown and Hardin judgments (but not both) from the City of Chicago pursuant to 745 ILCS 10/9-102. Section 9-102 directs a municipality to indemnify a tort judgment entered against an employee if the employee's misconduct was within the scope of his employment.

One year later, on May 3, 1996, the district court still had not ruled on Yang's petition for indemnification. On that date, Yang filed a request for status with the clerk of the court under Local Rule 12(Q). When he still had not heard an answer regarding his petition for indemnification on July 12, 1996, Yang filed a second request for status under Local Rule 12(Q). On August 2, 1996, Yang filed yet another request for status, this time on his petition for attorney's fees, which he had filed and was pending for over seven months without a decision.

On August 1, 1996, some fifteen months after Yang filed his petition for indemnification, the district court issued an order and an opinion, granting Yang's petition for indemnification as to the Hardin judgment, but denying it as to the Brown judgment. Yang subsequently filed an update of his fee petition.

On August 15, 1996, the City filed a motion to reconsider the district court's decision in favor of Yang's petition for indemnification. The court held a hearing on the City's motion on September 4, 1996, and, over Yang's objection, reopened discovery on the scope of employment issue and granted the City leave to file an additional brief in support of its motion to reconsider. The district court also ordered the City to file a response to Yang's fee petition.

The City never conducted any discovery on the scope of employment issue, nor did it file a brief in support of its motion to reconsider, nor file a response to Yang's fee petition. However, at the next hearing before the court, on October 22, 1996, the City did file a motion to dismiss Yang's petition for indemnification, which the court had that already granted, for lack of subject matter jurisdiction in light of the Supreme Court's decision in *Peacock v. Thomas,* 516 U.S. 349, 116 S. Ct. 862 (1996). Although the *Peacock* decision had been released in February of 1996, some eight months before the City filed its motion to dismiss, the district court ordered briefing on the City's motion and set a ruling date.

> On January 15, 1997, the district court ruled that it lacked subject matter jurisdiction over Yang's petition for indemnification and vacated its previous order granting the petition. The court also denied Yang's fee petition against Hardin, *sua sponte* and over Yang's objection. Judge Grady's sole explanation for denying the fee petition was to avoid getting "charged . . . for reporting purposes" with sitting on the petition for almost two years. On January 17, 1997, the district court entered orders dismissing Yang's § 9-102 petition for indemnification for lack of subject matter jurisdiction, vacating its judgment granting Yang's petition for indemnification, and denying Yang's fee petitions. Yang filed timely notice of appeal on February 6, 1997.

*See Yang*, 137 F.3d at 523-24.

The Seventh Circuit reversed the district court's orders dismissing Yang's § 9-102 petition for lack of subject matter jurisdiction and denying Yang's fee petition. In doing so, the Seventh Circuit correctly acknowledged this Court's holding in *Peacock v. Thomas*, 516 U.S. 349 (1996):

> In *Peacock*, the Court held that federal courts do not possess ancillary jurisdiction over new actions in which a federal judgment creditor seeks to impose liability for a money judgment on a person not otherwise liable for the judgment.

*See Yang*, 137 F.3d at 525. But, the Seventh Circuit also correctly noted that this Court in *Peacock* upheld ancillary jurisdiction over Rule 69 proceedings to execute federal judgments:

> However, the Supreme Court specifically cited Rule 69 as a procedure under ancillary jurisdiction to be used in executing federal judgment in accordance with state procedure and practice.

*See id.* Given that Yang's Rule 69 garnishment proceeding is not a new suit, the Seventh Circuit concluded that Yang's Rule 69 proceeding to collect a § 1983 judgment from the City falls within the district court's ancillary jurisdiction. *See id.* at 526-27. This Petition ensued.

On remand to the district court, this action was assigned to a new judge. On July 30, 1998, the district court entered a judgment against the City on Yang's § 9-102 petition in the amount of $234,671.56. On November 18, 1998, the district court entered another judgment against the City and in favor of Yang for attorney's fees in the amount of $191,628.75 and costs of $10,774.42. The City has filed a notice of appeal, and Yang has filed a notice of cross-appeal, on the judgment on Yang's attorney's fees and costs.

## REASONS FOR DENYING THE WRIT

Under Supreme Court Rule 10, a petition for a writ of certiorari will be granted only for compelling reasons. The principal purpose for which the Court uses certiorari is to resolve conflicts among circuit courts of appeals and state courts concerning important provisions of federal law. *See Braxton v. United States*, 500 U.S. 344, 347 (1991). The City believes that the Seventh Circuit's holding in this case conflicts with decisions in other United States courts of appeals concerning an important question of federal law. The City, however, has not cited a single post-*Peacock* decision that conflicts with the decision below. The Seventh Circuit's decision in this case, holding that ancillary jurisdiction exists in a post-judgment enforcement proceeding to

collect a federal judgment from a third party, is consistent with *Peacock* and the decisions of other United States courts of appeals. Further, this case presents no significant or frequently recurring question deserving of this Court's review. Therefore, the Petition should be denied.

## I.

## THE SEVENTH CIRCUIT'S DECISION CORRECTLY FOLLOWS *PEACOCK*, AS DO THE OTHER POST-*PEACOCK* DECISIONS.

The sole issue in *Peacock* was "whether federal courts possess ancillary jurisdiction over *new actions* in which a federal judgment creditor seeks to impose liability for a money judgment on a person not otherwise liable for the judgment." *See id.* at 351 (emphasis added). Holding that there is no federal jurisdiction under the facts in that case, the Supreme Court drew a distinction between subsequent, new lawsuits and supplementary proceedings to enforce judgments in the same lawsuits:

> In a subsequent lawsuit involving claims with no independent basis for jurisdiction, a federal court lacks the threshold jurisdictional power that exists when ancillary claims are asserted in the same proceeding as the claims conferring federal jurisdiction.

*See id.* at 355 (citations omitted).

*Peacock* involved a subsequent, new lawsuit, the factual bases of which were "independent from those asserted in [the first] suit." *See id.* at 356. In contrast, this case involves a supplementary enforcement proceeding in the original lawsuit, ancillary jurisdiction over which was expressly upheld by this Court, *see Peacock*, 516 U.S. at 356-59, and following *Peacock*, by the Seventh Circuit. *See Matos v. Richard A. Nellis, Inc.*,

101 F.3d 1193 (7th Cir. 1996); *Wilson v. City of Chicago*, 120 F.3d 681 (7th Cir. 1997); *Yang v. City of Chicago*, 137 F.3d 522 (7th Cir. 1998).

In section III of the *Peacock* decision, this Court explained why ancillary jurisdiction does not extend to a subsequent, new lawsuit that is factually independent of an earlier, concluded federal action. *See Peacock*, 516 U.S. at 354-59. At the same time, the Court was clear that there is ancillary federal jurisdiction:

> over a broad range of supplementary proceedings *involving third parties* to assist in the protection and enforcement of federal judgments — including attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances.

*See id.* at 356 (emphasis added). Pointing out the necessity of ancillary enforcement jurisdiction, the Court announced that under Rule 69(a) a federal judgment-creditor may "use any execution method consistent with the practice and procedure of the state in which the district court sits." *See id.* at 359, n.7. That is precisely what Yang did, here. Yang petitioned the district court in the same action, under Rule 69(a), to enforce a § 1983 judgment against a third party (the City) in accordance with a state statute (§ 9-102).

Notwithstanding the foregoing, the City claims that

> [a]s the decision below indicates, since *Peacock*, the Seventh Circuit has hewed to its position that federal courts have jurisdiction to enforce judgments against third parties *not holding assets of the judgment debtor* . . .

(Petition at 6) (emphasis added). The City further claims that the Seventh Circuit's position is at odds with:

> the long standing rule affirmed by *Peacock* — that post-judgment enforcement jurisdiction is limited to proceedings seeking to execute on the property of the judgment-debtor — bars all other enforcement proceedings, regardless of whether they are filed as separate lawsuit or instead as a Rule 69 motion in the original lawsuit.

(Petition at 7). Remarkably, the City cites not one case, statute or rule for this "long standing rule," nor does it cite to the part of the *Peacock* decision affirming that alleged rule — and with good reason. Nowhere in the *Peacock* decision is such a proposition even discussed, let alone affirmed. Moreover, there is no case supporting such a proposition.[2]

Citing *Futura Dev. of Puerto Rico, Inc. v. Estado Libre Asociado de Puerto Rico*, 144 F.3d 7 (1st Cir. 1998), the City argues that *Peacock* has wrought confusion, and that the First Circuit in *Futura* "urged this Court to revisit the issue." (Petition at 6). Contrary to the City's argument, the *Futura* case is consistent with the Seventh Circuit's ruling in this case (and the earlier *Matos* and *Wilson* cases) as well as with *Peacock*.

*Futura*, like *Peacock*, involved a second lawsuit. There, a judgment was entered against a public corporation of the Commonwealth of Puerto Rico in the initial lawsuit. After

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2. There are cases involving a supplementary enforcement proceeding against a third party holding the judgment-debtor's property. No case, however, stands for the proposition that there is ancillary enforcement jurisdiction *only* in such cases (in contra-distinction to cases involving enforcement of a judgment against a third party who has a legal obligation to indemnify, satisfy or pay the judgment).

exhausting appellate recourse, the Commonwealth gutted out the judgment-debtor, rendering it judgment-proof. *See id.* In the second lawsuit, the judgment-creditor sued the Commonwealth directly for satisfaction of the judgment from the first lawsuit. Following *Peacock*, the First Circuit correctly noted that *Futura* involved a subsequent, new lawsuit, rather than a post-judgment proceeding in the original lawsuit. *See id.* at 11. Further, reasoning that there was insufficient relatedness between the claims in the two separate lawsuits, because there was no common nucleus of operative facts, the First Circuit concluded that there was no ancillary jurisdiction over the second lawsuit. *See id.* at 13. Finally, noting the "manifest injustice" of a sovereign, which used its sovereign powers to thwart a federal judgment, the First Circuit brought to this Court's attention the frustrating result of applying *Peacock* in that case. *See id.* at 14.

Ironically, the City relies on that expression of frustration by the First Circuit to ask this Court to grant its Petition, apparently hoping that the Court would extend *Peacock* to virtually eviscerate post-judgment enforcement proceedings against third parties. Neither *Peacock* nor *Futura* supports such a far-reaching proposition. To the contrary, they both uphold ancillary jurisdiction over post-judgment enforcement proceedings, while holding that it does not extend to subsequent lawsuits that are factually independent of the original lawsuits. *See Peacock*, 516 U.S. at 356; *Futura*, 144 F.3d at 10-11. Therefore, those decisions do not conflict with the Seventh Circuit's decision here, or with *Wilson* or *Matos*.[3] Indeed, given that this case, *Matos* and *Wilson* all involved enforcement proceedings in the same lawsuits, they are consistent with *Peacock* and *Futura*.

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3. Alluding to footnote 2 of *Peacock*, Petitioner points to the six decisions cited there that are allegedly in conflict. (*See* Petition at 8-11). Any inconsistency among those six cases is not a reason to grant the Petition. In *Peacock*, this court already cleared up any confusion that may have resulted from those six cases.

## II.

## THIS CASE IS A POOR VEHICLE FOR ANY REFINEMENT OF ANCILLARY JURISDICTION.

This case is a poor vehicle for any refinement of ancillary jurisdiction because not only does it involve a Rule 69 enforcement proceeding, the factual basis of the enforcement issue, here, is the same as the factual basis of the § 1983 issue. Such a factual relatedness — really, complete overlap — is, of course, a crucial factor in determining ancillary jurisdiction. *See Peacock*, 516 U.S. at 354-56; *Futura*, 144 F.3d at 10-11 and 13.

In a § 1983 case, such as here, a factual determination is made as to what the police officer did or failed to do (those facts are relevant to wrongful conduct as well as "under color of state law"). In enforcing a § 1983 judgment under an indemnification statute, such as § 9-102 in this case, the scope of employment issue depends on the same facts (*i.e.*, what the police officer did or failed to do).

Unsurprisingly, there was no discovery conducted in the Rule 69 enforcement proceeding in this case and neither party presented any new evidence in order for the district court to decide Yang's petition for indemnification. Based on the exact same facts that gave rise to the § 1983 judgment, the district court merely applied § 9-102 and concluded that the officer's misconduct was within the scope of his employment. This case is far different from a frustrated judgment creditor's new lawsuit involving a completely new set of factual issues (alter ego, piercing the corporate veil, fraudulent conveyance and the like).[4]

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4. To the extent there may be different applications of *Peacock* by the lower courts, it is in cases of subsequent, new lawsuits involving a (Cont'd)

It is true that the concept of ancillary jurisdiction is not subject to easy definition. *See* Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure Jurisdiction*, § 3523 (2d ed. 1984). Throughout the history of the federal courts, that concept has been developed and refined. *Peacock* is the latest Supreme Court development, and it is clear; it is not possible to draw a clearer line in the abstract. After *Peacock*, the lower courts have compared and will compare new lawsuits related to earlier lawsuits and decide whether there is enough factual dependence or connectedness to invoke ancillary jurisdiction. But, in Rule 69 enforcement proceedings involving the same factual basis, such as in this case, there is no question. There is no reason to take this Rule 69 enforcement proceeding case and use it as a vehicle to further refine — if that is necessary — the concept of ancillary jurisdiction for cases involving subsequent, new lawsuits.

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(Cont'd)
completely new set of factual issues. *See, e.g., Futura*, 144 F.3d at 10-11 (no ancillary jurisdiction over new lawsuit; *Peacock* followed); *Central States v. Central Transp., Inc.*, 85 F.3d 1282 (7th Cir. 1996) (ancillary jurisdiction over new lawsuit; *Peacock* distinguished). But, subsequent to *Peacock*, there has not been a single reported decision in which a court has ruled that there is no ancillary jurisdiction over a post-judgment enforcement proceeding — not surprising in light of this Court's decision in *Peacock* that there is ancillary jurisdiction over such proceedings. *See Peacock*, 516 U.S. at 356-59.

## CONCLUSION

For the foregoing reasons, the City of Chicago's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## REPLY BRIEF FOR THE PETITIONER

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

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## REPLY BRIEF FOR THE PETITIONER

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### ARGUMENT

Respondent acknowledges that this case presents a question not resolved by the precise holding of any prior decision of this Court, including *Peacock v. Thomas*, 516 U.S. 349 (1996). In this case, as in *Peacock*, a plaintiff holding a federal judgment attempted to enforce it against a third party based on a theory not requiring that party to hold funds or other property belonging to any judgment debtor. In *Peacock* the plaintiff asserted the theory in a new action, whereas in this case the theory was presented as a motion under Fed. R. Civ. P. 69 in the original action. As respondent correctly acknowledges, *Peacock* held that ancillary jurisdiction does not extend to a proceeding insofar as it seeks relief "[i]n a subsequent lawsuit

involving claims with no independent basis for [federal] jurisdiction. . . ." 516 U.S. at 355. See also Resp. Br. 8. The question this case presents is whether *Peacock*'s limitation on federal jurisdiction applies only in proceedings brought as new actions or whether it reaches post-judgment proceedings in the original action as well. This is an issue on which the circuits have reached different results and is sufficiently important to merit plenary review.

1. As we explain in our petition, this issue is the subject of a circuit split. See Pet. 10-11 (comparing the decision below and *Argento v. Village of Melrose Park*, 838 F.2d 1483 (7th Cir. 1988), with *National Presto Industries, Inc. v. Dazey Corp.*, 107 F.3d 1576 (Fed. Cir. 1997), and *Sandlin v. Corporate Interiors, Inc.*, 972 F.2d 1212 (10th Cir. 1992)). Respondent does not so much as mention these contrary cases. And, although he asserts that the City "has not cited a single post-*Peacock* decision that conflicts with the decision below," Resp. Br. 7, this is flatly incorrect. *National Presto Industries* was decided after *Peacock*, and it conflicts with the decision below. More important, respondent's limitation of his argument to post-*Peacock* decisions simply ignores our submission that the Tenth Circuit's holding in *Sandlin*, which plainly survives *Peacock*, can be squared with neither the holding below nor the Seventh Circuit's prior holding in *Argento*.[1] Indeed, in *Peacock* the Court noted the conflict between *Sandlin* and *Argento*. See 516 U.S. at 352 & n.2. And, since respondent himself believes that *Peacock*'s holding and rationale do not reach efforts to enforce judgments when brought in the original lawsuit under Rule 69, he

[1] As we explain in our petition, *Sandlin* held that federal courts lack ancillary jurisdiction over a theory seeking property not belonging to any judgment debtor, regardless of whether the theory is presented as a new action or instead in the original action under Rule 69. See 972 F.2d at 1217-18. *Argento* held that federal courts possess ancillary jurisdiction over that type of theory when it is presented in the original action. See 838 F.2d at 1487-90.

cannot and does not claim that *Peacock* changed the law in the Tenth Circuit as articulated in *Sandlin*; and he also makes no claim that *Sandlin* can be reconciled with the decision below.[2] Accordingly, respondent's assertion that *Peacock* "already cleared up any confusion that may have resulted from th[e] six cases" it listed as in conflict, Resp. Br. 11 n.3, is plainly wishful thinking. This Court should resolve the conflict in the circuits by accepting this case for plenary review.[3]

2. Yang also contends that the decision below is correct. See Resp. Br. 7-8, 9, 11. This completely ignores that the federal rules cannot expand jurisdiction. Thus, as we explain in our petition, in light of *Peacock*'s holding that there is no jurisdiction over a new lawsuit seeking relief against a third party under a theory not requiring that party to hold property of a judgment debtor, there can be no basis for bringing such a proceeding under Rule 69 either. See Pet. 10, 12.

3. Finally, Yang argues that this case is not a good vehicle for refining the scope of ancillary enforcement

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[2] Nor is the decision below an isolated aberration. After we filed our petition, we learned of *Cigna Property and Casualty Insurance Co. v. Polaris Pictures Corp.*, 159 F.3d 412 (9th Cir. 1998), in which the Ninth Circuit held that Rule 69 permits amendment of a final judgment to add a judgment debtor on a state-law alter-ego theory and, in reaching that conclusion, cited *Peacock* but did not identify any basis for federal jurisdiction over the claim other than Rule 69. See *id.* at 421.

[3] Thus, the First Circuit was correct in *Futura Development of Puerto Rico, Inc. v. Estado Libre Asociado de Puerto Rico*, 144 F.3d 7 (1st Cir.), cert denied, 119 S. Ct. 338 (1998), when it observed that the courts of appeals are applying *Peacock* differently and urged this Court to revisit the issue. See *id.* at 14. Of course, the precise holding in *Futura Development* is not in conflict with the decision below or, indeed, with the law in any other circuit, since *Futura Development*, like *Peacock*, involved a new action. Nevertheless, the First Circuit's concern is instructive of the confusion about how to read *Peacock*.

jurisdiction. See Resp. Br. 12. In this connection, he makes several insufficient observations.

a. The first is that "ancillary jurisdiction is not subject to easy definition." Resp. Br. at 13. That is surely true if ancillary enforcement jurisdiction is cast in terms as amorphous as the test adopted by the Seventh Circuit—that a district court possesses ancillary jurisdiction over a post-judgment proceeding provided it " 'does not inject so many new issues that it is functionally a separate case.' " Pet. App. 9a (quoting *Wilson v. City of Chicago,* 120 F.3d 681, 684 (7th Cir. 1997)). But there is no reason why ancillary jurisdiction should be cast that way. To the contrary, it is particularly important that jurisdictional rules be clear and easily applied. To this end, ancillary enforcement jurisdiction would not be nebulous at all if, as we propose, this Court limited it definitively to efforts to enforce a judgment against the property of a judgment debtor even when they are brought in the original action under Rule 69. That limitation would achieve clarity, predictability, and uniformity of application—attributes that the Seventh Circuit's test plainly lacks. Under that limitation, of course, the decision below should be reversed, since respondent did not plead in his Rule 69 motion that he was seeking property of the police officers liable on the judgment but, rather, that he had a right to be paid by the City if he could establish that the officers had acted within the scope of their employment. And, as we explain in our petition, this case is a particularly good vehicle for this Court's consideration of the limitation we propose, since the case presents the jurisdictional issues in a context that arises often—a request by a civil rights plaintiff, who has obtained a judgment against a municipal employee, for payment of that judgment by the municipality under a state law theory allowing such relief when the employee committed tortious conduct within the scope of his employment. See Pet. 15-17.

b. Yang asserts that the presence of this municipal scope-of-employment issue does not make this case a good vehicle for considering the jurisdictional limitation we propose, since, he argues, that issue is co-extensive with the color-of-law issue on which his section 1983 claim against the police officers depended. See Resp. Br. 12. According to Yang, the scope-of-employment issue is easy since it and the color-of-law issue "complete[ly] overlap." *Id.* at 12. This assertion is incorrect. Officials act under color of law whenever they abuse their official powers. See, *e.g.*, *Monroe v. Pape*, 365 U.S. 167, 183-87 (1961). In contrast, as we explain in our petition, officials do not act within the scope of their employment when they commit serious misconduct, even when it involves an abuse of official authority, unless they engage in that behavior to serve their employer. See Pet. 15-17. For example, in *Wright v. City of Danville*, 675 N.E.2d 110 (Ill. 1996), the Illinois Supreme Court squarely held that municipal officials who approved an illegal settlement of litigation in order to extend their terms of office did not act within the scope of their employment, even though they plainly had abused their authority. See *id.* at 118-19.[4]

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[4] Respondent observes, as purported support for his assertion that the two issues overlapped in this case, that no discovery was conducted, and no new evidence was presented, in connection with his post-judgment proceeding against the City. See Resp. Br. 12. Of course, the district court dismissed respondent's post-judgment proceeding for lack of jurisdiction. Accordingly, the Seventh Circuit erred in directing the district court to enter judgment against the City on the merits of the post-judgment proceeding without factual development concerning the scope-of-employment issue. See Pet. App. 10a-11a.

In this case the court of appeals correctly concluded that Officer Hardin was acting under color of law when respondent was injured, since Hardin was on duty, in uniform, and in a marked squad car. See *Yang v. Hardin*, 37 F.3d 282, 284 (7th Cir. 1994). Of course, these factors do not even suggest that Hardin performed or failed to perform any duty assigned him by the City and, thus, do not establish that he was acting within the scope of employment.

Moreover, as we explain in our petition, the issue of scope of employment, which many states use for determining when municipal governments will be liable on a judgment against an employee, is frequently a difficult concept to apply. Indeed, in this case the issue was apparently difficult enough that the Seventh Circuit got it wrong. Officer Hardin actively assisted his partner in escaping from the scene of his crime and, as we explain in our petition, see Pet. 15-16, the Second Restatement of Agency, which Illinois follows, provides that even an employee who is on duty acts outside the scope of his employment if his conduct "is different in kind from that authorized, . . . or too little actuated by a purpose to serve the master." *Wright v. City of Danville,* 675 N.E.2d at 118.[5] In any event, whatever factual relationship there may be between the color-of-law and scope-of-employment inquiries in a particular case has no jurisdictional significance. One point that *Peacock* makes perfectly clear is that once judgment is entered, any factual interdependence between claims within federal jurisdiction and a state-law claim that is subsequently brought cannot support federal jurisdiction over the state law claim; the Court recognized that upon entry of a final judgment on the federal claims, "the ability to resolve simultaneously factually intertwined issues vanished." 516 U.S. at 355.

As often occurs, the federal plaintiff in this case, having obtained a judgment against an official acting under color of state law, attempted to enforce that judgment against the official's employer under a state statute that authorizes the employer to make such a payment if the judgment arises from acts within the scope of the official's employ-

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[5] Respondent does not address the Seventh Circuit's error in concluding that the theft and abuse he received were within the scope of employment of Chicago police officers. That erroneous ruling is responsible for judgments totalling nearly half a million dollars that have been entered against the City in this case thus far. See Resp. Br. 7.

ment. Accordingly, the presence of the recurring scope-of-employment issue does make this case a particularly good vehicle for considering the jurisdictional question it presents.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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